No. 7504

In the United States Circuit Court of Appeals for the Ninth Circuit

L. H. WOLF, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITION FOR REVIEW OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS

BRIEF FOR THE RESPONDENT

FRANK J. WIDEMAN,
Assistant Attorney General.

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CITATIONS

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OPINION BELOW

The only previous opinion in this case is the unreported opinion of the United States Board of Tax Appeals (R. 16–20).

JURISDICTION

The petition for review in this case involves income taxes of $1,249.44 against L. H. Wolf for the year 1929, and is taken from a decision of the United States Board of Tax Appeals entered January 11, 1934 (R. 20–21). The case is brought to this Court by petition for review filed April 2, 1934 (R. 29), pursuant to Sections 1001–1003 of

the Revenue Act of 1926, c. 27, 44 Stat. 9, 109–110, as amended by Section 1101 of the Revenue Act of 1932, c. 209, 47 Stat. 169.

QUESTIONS PRESENTED

Part of petitioner's parcel of land was condemned by a municipality. The compensation awarded was greater than the cost. Assessments were made against the remainder of the parcel and petitioner exercised his option to set off the award against the assessments. Upon these facts the following questions arise:

1. Whether the profit on a disposition of part of a parcel of land is rendered nontaxable because the petitioner used the awards as offsets against assessments upon the remainder of the parcel.

2. Whether the application of the awards against the assessments can be said to constitute "the acquisition of other property similar or related in service or use" within the meaning of Section 112 (f), Revenue Act of 1928.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra,* pp. 17–24.

STATEMENT

There was a written stipulation as follows (R. 30–33):

I

In 1920 Petitioner acquired a parcel of property located in Hollywood, California,

described as Lot A, Tract 2129, Map Book 24, Page 68, Los Angeles County, California. That the cost of such property was Twenty-one Thousand Dollars ($21,000.00).

II

Between 1920 and 1925 Petitioner constructed various buildings on said property. The said buildings covered the entire lot, except for a driveway through the property. A two-story brick building stood on the front portion of the lot. The second story was built over the driveway. A smaller frame and stucco building was on the rear of the lot.

III

The property was 103 feet wide, fronting on Cahuenga Avenue and 383 feet deep.

IV

In 1929 the City of Los Angeles, for the purpose of opening up Ivar Avenue, a public thoroughfare, condemned a strip 70 feet wide running diagonally across the approximate center of Petitioner's land. This strip represented 20 percent of the total area of Petitioner's property. By Ordinances No. 53214 (approved November 10, 1925), and No. 54065 (approved February 24, 1926), the City of Los Angeles created a special improvement district and the condemnation proceedings and improvements herein referred to, were made pursuant thereto.

V

By order of Court Petitioner was awarded the following amounts:

(1) Award for buildings taken	$10,267.00
(2) Award for the land taken from Petitioner	23,549.00
(3) As severance damages for the balance of land not taken	4,006.00
Total	37,822.00

VI

The City of Los Angeles levied special assessments for opening and widening work on the newly created street adjacent to parcels of Petitioner's property in the amounts of $19,470.32 and $19,243.28, respectively, totaling $38,713.60.

VII

Petitioner paid the special assessments amounting to $38,713.60, by applying the awards amounting to $37,822.00, against assessments and paying the balance of $891.60 in cash. Copies of the Special Assessments are attached hereto and marked Exhibits 1 and 2.

VIII

In 1931, the City of Los Angeles levied, and the Petitioner paid further special assessments on the two newly created parcels of $1,317.20, and $1,315.55 for the paving, sidewalks, storm drain, etc., along Ivar Avenue, occasioned by the opening of said Avenue in 1929. Copies of the special assess-

ments are attached hereto and marked "Exhibits 3 and 4."

IX

In 1929, Petitioner paid $1,000.00 Attorney's fees in connection with the said awards and special assessments.

X

It was determined by the Respondent that the Petitioner derived income of $18,349.00 on the payment made for the land computed as follows:

Award received for portion condemned	$23,549.00
Cost of portion condemned	4,200.00
Difference	19,349.00
Less Attorney fees	1,000.00
Taxable gain	18,349.00

XI

In respect of the buildings the Petitioner sustained neither gain nor loss.

XII

Petitioner did not sell, exchange, or otherwise dispose of the above-described property, in 1929, except as stated above.

XIII

Further evidence may be offered by either party hereto.

In addition, the parties orally stipulated as follows (R. 39–40):

> The Petitioner expended in 1929 and 1930, $6,809.98 in the necessary demolition, alteration, and refacing of buildings standing on the property involved in this proceeding. The $10,267 mentioned in the written Stipulation, as being for buildings taken, was among other things, intended to cover this work.

The Board, upon motion of petitioner, permitted petitioner to file an amended petition, with the understanding that all the material allegations thereof were to be considered as denied by respondent.

The parties also stipulated that the Board might take judicial notice of the ordinances of the City of Los Angeles, under which the condemnation proceeding in question was instituted, and of any part of this proceeding, that is, the complaint and the judgment or award or any part of the official records of this condemnation proceeding; that any parts of the ordinances and/or the condemnation proceeding in question as set out in the briefs of the parties could be considered in evidence in the case.

In addition, L. H. Wolf, the petitioner, testified as follows (R. 40–41):

> My name is L. H. Wolf. I am the petitioner in this case.
>
> I own the property in Hollywood, California, described as Lot A, Tract 2129, Map Book 24, Page 68. I acquired the property in 1920, and made improvements thereon, totaling approximately $75,000, subsequently.

> The lower floor of the building in the front of the lot was occupied by stores, the second story by a hotel; the buildings in the rear were occupied by an automobile repair shop, a nickel-plating works, a laundry-loading station, and a storage room.
>
> The portion of my property affected by the opening of Ivar Avenue was, both before and after such opening, in a light manufacturing district. The community has not been improved or built up since the opening of Ivar Avenue.
>
> I did not vote or petition for the creation of the special assessment district which was the basis for the opening of Ivar Avenue through my property.

Exhibits 5, 6, and 7, consisting of certain maps received in evidence before the Board, were transmitted to this Court upon motion of petitioner (R. 42–44).

The Commissioner decided that the petitioner had realized taxable gain on the land taken and determined a deficiency of income taxes against petitioner for the calendar year 1929 in the amount of $1,249.44. The petitioner filed a petition for review and redetermination of the deficiency before the United States Board of Tax Appeals, and the Board affirmed the action of the Commissioner and determined the deficiency accordingly.

SUMMARY OF ARGUMENT

It is clear that petitioner disposed of 20% of a parcel of land and was awarded a sum greater than

the cost of the entire tract. This profit satisfies the accepted definition of income, but petitioner contends that it is not taxable because it was used to satisfy assessments against the remainder of the tract which he retained. These assessments were separate and distinct matters from the awards; they were not a charge against the portion disposed of, but against the portion retained. The incidence of the tax depends upon the receipt of income, and the result cannot be varied by the use to which the income is put. The awards to petitioner were of money. Petitioner was not required to use them to satisfy the assessments. He was free to use them for any purpose, and his election to set them off against the assessments does not avoid the tax.

Nor is the special statutory relief available to petitioner. Petitioner acquired nothing which would answer to the statutory definition of "other property similar or related in service or use to the property so converted."

ARGUMENT

Petitioner acquired a parcel of land at a cost of $21,000 and disposed of a strip representing 20% of its total area, receiving therefor $23,549. It is obvious that this transaction resulted in a profit to petitioner, and it is clear that it falls within the accepted definition of income which includes a profit gained through the sale or conversion of capital assets, *Eisner* v. *Macomber,* 252 U. S. 189, 207. Nor does it matter that petitioner's

profit was derived from a transaction in which the city condemned and took his property. There can be no denial that a condemnation award is income to the extent that it exceeds cost, *Patrick McGuirl* v. *Commissioner* (C. C. A. 2nd), decided January 7, 1935, reported in 353 C. C. H. par. 9055. That the petitioner has disposed of only a part of a large tract does not prevent the transaction from being a taxable disposition, *Searles Real Estate Trust* v. *Commissioner,* 25 B. T. A. 1115.

However, petitioner contends that the transaction here involved requires that these principles be disregarded due to the fact that the city which condemned the property made assessments against petitioner for street opening and widening amounting to $38,713.60, which petitioner paid by applying the total awards, amounting to $37,822, against the assessments, and paying the difference of $891.60 in cash. These assessments of course were not a charge against the portion of petitioner's property which the city condemned, but against the portion which the petitioner retained. What is here involved is petitioner's profit upon the portion of its property disposed of. That it used that profit to satisfy a claim against its remaining property is of no importance. Income taxes are not varied by reason of the use which is made of the income. Assume a manufacturer who buys raw material from and sells finished products to the same customer. His profits on the sales are a part of his income, whether or not he uses them to pay

for his raw material. Nor would the result be any different in a case where his bills for raw material equaled what was due him from the sales of the finished products, so that in fact no money passed from one to the other, but the accounts were balanced and mutually satisfied.

The award for the condemnation was a separate matter from the assessments for the improvements. If petitioner's entire parcel of land had been condemned there would have been an award and no assessment. If petitioner's parcel had been within the improvement district but not condemned, there would have been an assessment and no award. The maps in evidence show that the improvement district was very extensive and the number of property owners who received awards was necessarily very small as compared with the number who were required to pay assessments.

Petitioner had the right to collect his awards in full and pay the special assessments over a period of years. Section 12 of the Street Opening Act of 1903, as amended by California Statutes (1909), ch. 684, pp. 1035, 1040; Section 3, Statutes of California (1911), Appendix, *infra,* p. 24. The award was of money but petitioner had the option of paying the assessments by offsetting the awards against them. Section 21, Street Opening Act of 1903, California Statutes (1903), Appendix, *infra,* p. 20. Petitioner availed himself of this option (R. 32), but was required to deliver receipts for

the amounts due him. Section 21, *supra*. Accordingly, in contemplation of law petitioner received the awards in cash.

Petitioner contends (Br. 13–14) that the result here is the same as though he had built the street himself and dedicated it to the public. There would, of course, be no income involved in such a situation, but the difference between a gift or investment and a disposition at a profit is so obvious that this illustration shows that petitioner is proceeding upon a fallacious assumption.

Petitioner's attempt to merge the awards and assessments into a single transaction is equally futile. That the awards and assessments were for two distinct purposes, were arrived at by different methods, and were two distinct things, is evident from a perusal of the pertinent statutes. Sections 2, 5, 6, 8, 10, 12, 16, 19, 20, 21, 22, 30, and 31, Street Opening Act of 1903, California Statutes (1903), c. CCLXVIII, p. 376.

The sentence in Section 10, Second, of the Street Opening Act of 1903, as amended by California Statutes (1925), c. 104, p. 242, Appendix, *infra*, p. 20, reading "Such damages must be fixed irrespective of any benefit from such improvement" is significant. That was undoubtedly said to make it clear that, as to the land not taken, the owner, although he was to receive some benefit from the land assessed for which he would have to pay, was, in addition, to be entitled to severance damages.

If such damages were to be received irrespective of any benefit, surely he was to receive the value of the land taken irrespective of any benefit. The importance, from the taxing point of view, of the separation of the awards into (1) value of the land taken, and (2) damages to the land not taken, is that it fixes the exact amount of the gain realized from the disposition of the land taken, and the Commissioner of Internal Revenue used that amount in determining the gain and did not include any part of the severance damages in income.

The word "may" in Section 21, providing for the off-set, is very significant on the question of separability of the awards and the assessments. It means that the petitioner had an option to pay the assessments with the awards. He was not obliged to do so. The statute, in this respect, is different from the statutes in many States which allow the condemning authority to make the off-set and pay the difference, if any, to the owner, who is therefore granted no option in the matter. Of such a nature was the statute in *Carrano* v. *Commissioner*, 70 F. (2d) 319 (C. C. A. 2nd), relied upon by the petitioner, which case is also not in point because there was no separation of the awards for value of land taken and for severance damages to the land not taken.

The petitioner here could have done what he pleased with the money which he received from the awards, and under Section 31 of the Street Opening Act, California Statutes (1903), c.

CCLXVIII, he might have received it even before his assessments became delinquent. As for payments of the assessments, he could have permitted them to go to bond and paid them in installments, California Statutes (1911), Sec. 3, c. 630, p. 1192, Appendix, *infra,* p. 24.

When the petitioner off-set the awards against the assessments he did not pay his own awards, as he says in his brief (p. 17), but used the amounts to which he was entitled from the awards to pay the cost of improvements to his other property, from which he would receive the benefit. A payment for assessment benefits he was expressly prohibited from deducting from income by Section 23 (c) (3), Revenue Act of 1928 (Appendix, *infra,* p. 17), and, if his contentions are sustained, it would, in effect, be allowing him such a deduction, although other taxpayers, such as those who received no awards (of whom there were many more than those who received awards) would not be allowed similar deductions, which would be unfair and unequal, and, therefore, it is to be presumed, not intended. The petitioner can, however, add the payment which he makes for assessments to the cost of the property retained and upon sale thereof his gain will be reduced by the amount of such payment, *Champion Coated Paper Co.* v. *Commissioner,* 10 B. T. A. 433, 445–447; *F. M. Hubbell Son & Co.* v. *Commissioner,* 19 B. T. A. 612, 615, affirmed, 51 F. (2d) 644 (C. C. A. 8th), certiorari denied, 284 U. S. 664; I. T. 2599, X–2 Cumulative Bulletin 170.

The awards and the assessments were separate transactions, even though they may have been provided for by the same statute. It is only a fortuitous circumstance that petitioner, unlike many others, was affected by both. This Court has held two bond transactions to be entirely separate despite the fact that the same money was involved in both. *San Joaquin Light & Power Corp.* v. *McLaughlin,* 65 F. (2d) 677. See also *Helvering* v. *The California-Oregon Power Co.,* decided January 7, 1935, reported in 353 C. C. H., par. 9054.

In regard to the petitioner's contention that if taxable income should be held by this Court to have been realized on the sale of the lot condemned, $7,742.72, or 20% of the assessment, should be added to the cost of the lot condemned, it need only be said that under Section 16 of the Street Opening Act of 1903, Appendix, *infra,* pp. 22–23, the assessments were not laid on the lot condemned and no part of them should, therefore, be added to its cost.

Petitioner's final contention is that the profit was nontaxable under Section 112 (f), Revenue Act of 1928, Appendix, *infra,* p. 18, because it was "expended in the acquisition of other property similar or related in service or use to the property" taken by condemnation. It is clear from the construction of the statute that this is a departure from the general rule, and hence petitioner is in the position of one claiming exceptional treatment. Such statutes are not to be construed liberally, as contended

by petitioner. On the contrary, they are strictly construed against the exemption, and one claiming the application of such statutes has the heavy burden of showing that he is within the class intended to be benefited, *Bank of Commerce* v. *Tennessee*, 161 U. S. 134, 146; *Heiner* v. *Colonial Trust Co.*, 275 U. S. 232, 235; *Bowers* v. *Lawyers Mortgage Co.*, 285 U. S. 182, 187.

Petitioner contends that, because he exercised the option granted to him by Section 21 of the Street Opening Act of 1903, Appendix *infra*, pp. 23–24, of offsetting the assessments upon his property not taken against the awards to him for his property taken, and with the addition by him to the awards of $891.60 in cash, thus paying the assessments, he thereby expended the money forthwith in good faith under regulations prescribed by the Commissioner with the approval of the Secretary in the acquisition of other property similar or related in service or use to the property so converted. The petitioner's contention on this point seems to be that he thereby acquired some property right in the new street. This contention, as the Board in its opinion said (R. 19), is "highly artificial." But assuming, without admitting, that he did acquire some property right in the new street, the further contention made by him that this property right acquired is similar or related in service or use to the property condemned is without foundation in fact. The property condemned was the fee in that

property with improvements thereon which had been devoted by him to business purposes. Assuming that he, as an abutting owner, acquired a special easement in the street, additional to any rights which he, as one of the public, might have in the street, that easement is not the fee, which fee had been dedicated to the city (see Section 12, as amended by Cal. Stats. 1909, c. 684, pp. 1035, 1040), and he could not use it as he could have used the property condemned. The money received by him was, therefore, not used as the taxing statute provided, if gain is not to be recognized. The gain should therefore be recognized.[1]

CONCLUSION

The decision of the Board of Tax Appeals should be affirmed.

Respectfully submitted.

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JANUARY 1935.

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[1] A good example of the kind of property similar or related in service or use to the property converted intended by the statute is that acquired with the money received from the award in the condemnation proceedings mentioned in the case of *Bliss* v. *Commissioner*, 27 B. T. A. 803.

APPENDIX

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 22. GROSS INCOME.

(a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

* * * * *

(e) *Determination of gain or loss.*—In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in sections 111, 112, and 113.

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(c) *Taxes generally.*—Taxes paid or accrued within the taxable year, except—

* * * * *

(3) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of

so much of such taxes as is properly allocatable to maintenance or interest charges.

* * * * *

SEC. 42. PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period.

SEC. 111. DETERMINATION OF AMOUNT OF GAIN OR LOSS.

(a) *Computation of gain or loss.*—Except as hereinafter provided in this section, the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in section 113, and the loss shall be the excess of such basis over the amount realized.

* * * * *

(d) *Recognition of gain or loss.*—In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the purposes of this title, shall be determined under the provisions of section 112.

* * * * *

SEC. 112. RECOGNITION OF GAIN OR LOSS.

(a) *General rule.*—Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

* * * * *

(f) *Involuntary conversions.*—If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of

the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commissioner with the approval of the Secretary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

* * * * *

SEC. 113. BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Property acquired after February 28, 1913.*—The basis for determining the gain or loss from the sale or other disposition of property acquired after February 28, 1913, shall be the cost of such property; * * *.

Treasury Regulations 74, promulgated under the Revenue Act of 1928:

ART. 571. *Recognition of gain or loss.*—In the case of a sale or exchange, the extent to which the amount of gain or loss determined under section 111 shall be recognized, is governed by the provisions of section 112. Section 112 provides that the entire amount of the gain or loss upon any sale or exchange of property shall be recognized, with specified exceptions therein set forth, which are discussed in articles 572–580. Unless the sale or exchange falls within the provisions

of these articles the entire amount of the gain or loss thereon must be calculated and reported.

ART. 579. *Involuntary conversion of property.*—Section 112 (f) deals with cases in which property is compulsorily or involuntarily converted into similar property, or into money, as a result of fire, shipwreck, theft, condemnation, or similar causes enumerated in the Act. If the property so destroyed, stolen, seized, or condemned is replaced in kind by similar property or property related in service or use, no gain or loss is recognized. If, however, the original property is compulsorily or involuntarily converted into money, gain or loss will be recognized unless the money is forthwith, under regulations prescribed by the Commissioner with the approval of the Secretary, expended—

(1) In the acquisition of other property similar or related in service or use to the property so converted,

(2) In the acquisition of control of a corporation owning such other property, or

(3) In the establishment of a replacement fund.

If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended. See article 601 for the basis for determining gain or loss from the sale or other disposition of the property so acquired.

Street Opening Act of 1903, California Stat. 1903, c. CCLXVIII, pp. 376, 379:

SEC. 10. (As amended by Statutes of California, 1925, c. 104, p. 238, 242). For the purpose of assessing the compensation and damages, the right thereto shall be deemed to

have accrued at the date of the issuance of summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed by the provisions of this act, *provided,* that in any case in which the issue is not tried within one year after the date of the commencement of the action, unless the delay is caused by the defendant, the compensation and damages shall be deemed to have accrued at the date of trial.

If an order be made letting the plaintiff into immediate possession and the plaintiff shall take immediate possession upon commencing eminent domain proceedings and thereupon giving such security in the way of money deposits as the court may determine to be reasonably adequate to secure compensation to the owner, as provided in section fourteen of article one of the constitution, then the compensation and damages awarded shall draw interest at the rate of seven per cent per annum from the date of such order.

No improvements placed upon the property proposed to be taken, subsequent to the date of the publication of the notice of the passage of the ordinance of intention, or subsequent to the date of the filing of a notice of the pendency of an action brought for the condemnation of such property, shall be included in the assessment of compensation or damages.

The referees, or court, or jury, as the case may be, shall find separately:

First.—The value of each parcel of property sought to be condemned, and all improvements thereon pertaining to the realty,

and of each separate estate or interest therein;

Second.—If any parcel of property sought to be condemned is only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, and to each separate estate or interest therein, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff. Such damages must be fixed irrespective of any benefit from such improvement.

SEC. 16. (As amended by Statutes of California, 1925, c. 104, p. 238, 243.) The city engineer shall deliver said diagram to the street superintendent and shall indorse thereon the date of such delivery. The street superintendent upon receiving the said diagram shall proceed to assess the total expenses of the proposed improvement (first deducting from such total expenses such percentage thereof or sum toward the expense of said improvement, if any, as the city council may have declared by the ordinance of intention that the city shall pay) upon and against the lands, including the property of any railroad or street railroad, within said assessment district, except the land to be taken for such improvement, in proportion to the benefits to be derived from said improvement. The street superintendent shall complete said assessment within sixty days after the receipt by him of said diagram; *provided,* however, that the city council may by order extend the time for completing said assessment for a period not exceeding ninety days additional. The total expenses of the improvements so to be assessed shall include the amounts awarded

to the defendants by the interlocutory judgment in the action for condemnation, together with their costs, the compensation and expenses of the referees, as allowed by the court, and all other costs of the plaintiff in such action, the expenses of making the assessment, and all expenses necessarily incurred by said city, in connection with the proposed improvement for the publication of ordinances, posting and publication of notices, for maps, diagrams, plans, surveys, searches and certificates of title to the property to be taken, and all other matters incident thereto.

* * * * *

SEC. 21. The owner of any property assessed, who is entitled to compensation under the award made by the interlocutory judgment, may, at any time after such assessment becomes payable, and before the sale of said property for non-payment thereof, as hereinafter provided, demand of the street superintendent that such assessment, or any number of such assessments, be offset against the amount to which he is entitled under said judgment. Thereupon, if said amount is equal to or greater than such assessments, including any penalties and costs due thereon, the assessments shall be marked "paid by offset"; and if the said amount is less than the assessments, and any penalties and costs due thereon, the person demanding such offset shall at the same time pay the difference to the street superintendent in money, and the assessments shall, on such payment, be marked paid, the entry showing what part thereof is paid by offset and what part in money. In either case, as a condition of the offset, such person must execute to the city and deliver to the street superintendent dup-

licate receipts for such part of the amount due him under said interloctuory judgment as is offset against such assessments, penalties, and costs. One of said duplicate receipts shall be filed by the street superintendent in his office, the other shall be filed with the clerk of the superior court, and on such filing, the city shall be entitled to a satisfaction pro tanto of said interlocutory judgment.

Statutes of California, 1911, c. 630, p. 1192:

SEC. 3. Whenever it is determined as provided in section 2 hereof that improvement bonds may be issued to represent assessments, the owner of any lot or parcel of land against which an assessment has been made, when the amount of such assessment is fifty ($50) dollars or over, may at any time prior to delinquency, elect to pay such assessment in installments and to have an improvement bond issued against such lot, in the form and manner and with the effect in this act provided; *provided,* there be no other bond or bonds outstanding against said lot representing any special assessment.

U. S. GOVERNMENT PRINTING OFFICE: 1933